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Filing date: **04/10/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |  |
|---------------------------|--|
| Proceeding                | 92048777   |
| Party                     | Defendant<br>Michael Calmese   |
| Correspondence<br>Address | MICHAEL CALMESE<br>3046 N 32ND STREET, UNIT 321<br>PHOENIX, AZ 85018-6842<br>UNITED STATES<br>proveit@excite.com, usaproveit.com, usaproveit@yahoo.com |
| Submission                | Other Motions/Papers   |
| Filer's Name              | Michael Calmese  |
| Filer's e-mail            | usaproveit@yahoo.com   |
| Signature                 | s/Michael Calmese/   |
| Date                      | 04/10/2013   |
| Attachments               | AMENDED STATUS NOTICE TTAB15.pdf ( 5 pages )(236264 bytes )  |

**IN THE UNITED STATES PATENT TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

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|---|---|-----------------------------|
| adidas America, Inc., a Delaware Corporation, | ) | Cancellation No.: 92048777  |
| Petitioner,                                   | ) | Registration No.: 2,202,454 |
| -against-                                     | ) | Registration Date: 11/10/98 |
| Michael D. Calmese, a Resident of Arizona     | ) | Mark: <b>PROVE IT!</b>      |
| Registrant.                                   | ) |                             |
| _____   | ) |                             |

**AMENDED NOTICE OF STATUS**

Pursuant to the Boards Order to March 1, 2012 Order, Registrant Michael D. Calmese (“Calmese”) hereby notifies the Board that a final determination has been reached by the Ninth Circuit Court of Appeals on April 8, 2013 regarding Calmese’s pending appeal and motion for disqualification. Calmese respectfully amends his April 4<sup>th</sup>, 2013 Notice Of Status and notifies the Board that he is going to petition the U.S. Supreme Court and there are still pending issues in this matter in light of the Ninth Circuit Panels April 8, 2013 unfavorable ruling for Case No. 11-35053 and Calmese’s Malpractice lawsuit on file with the Oregon State Bar. Also see *Softbelly’s, Inc. v. Ty, Inc.*, 2002 TTAB LEXIS 529, \*6 (TTAB Aug. 13, 2002).<sup>1</sup> As the High Court has ruled on adidas’ attempt to cancel Calmese’s

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<sup>1</sup> On November 21, 2012 the Ninth Circuit AFFIRMED and MANDATED November 2, 2010 the cancelation trial in favor of Calmese, as adidas did not file a petition for a rehearing or review by the U.S. Supreme Court. The high

trademark, it is plain to see that adidas' cancelation trial and the appeal that follow were in fact lost by adidas and has reached a final determination. Likewise Calmese contends that, when all of his issues have reached a final determination, this Cancelation Proceeding should honor and follow the ruling as issued by the High Court without any more burden or expense. Adidas had the burden of proof and lost the trial, not Calmese as an attorney pro se litigant and defendant.

As Calmese is preparing a petition for certiorari, which will explain why the district court summary judgment, in part, affirmed by the Ninth Circuit Court was wrong.<sup>2</sup> Calmese's petition will not be devoted exclusively to showing why the lower court made a mistake but more importantly, it will dispute the determinations of law rather than findings of fact, as the law is quite clear.

Calmese's argument regarding the United States Patent and Trademark Office's ("PTO") previous rulings, (Serial Nos. 77/073502 and 77/602642) have been maintained throughout this litigation and ignored long enough.<sup>3</sup> How the PTO's previous ruling could be ignored and shielded from the district court record after adidas mentions the PTO's previous rulings in their Complaint in (Doc. 1,

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Court has ruled and adidas LOST the district court trial and the subsequent appeal that followed. See adidas' appeal Case No. 11-35080.

<sup>2</sup> While Calmese has a Malpractice suit filed with the Oregon State Bar ("OSB"), Calmese is also preparing and standing ready to file a malpractice lawsuit in district court, as the OSB is adverse to Calmese. In short, the OSB Limited Liability Fund does not represent me just attorneys.

<sup>3</sup> Calmese hopes someone will sooner or later address the issue of the PTO's previous rulings and how they should have affected the Sleekcraft Analysis for the adidas v. Calmese lawsuit even after Honorable Judge Janice M. Stewart made the statement herself that the PTO's previous rulings were a matter of record, "...according to the pleadings" on October 22, 2008. See (Doc. 37-3, Pg. 28 of 31, lines 3-5).

Paragraph 4 and 16). Moreover, the PTO's previous rulings, also known as the May 24, 2007 letter to adidas from Calmese's first attorney Richard Gaxiola, can also be seen in adidas' trial exhibits. See (Doc. 259, Pg. 8 of 11, Trial Exhibit No. 118). Ultimately, the PTO's previous rulings attached to the May 24, 2007 letter were overlooked because on October 22, 2008 Judge Stewart and the Oregon District Court confirmed the PTO's previous rulings were a part of the pleadings. See the Transcript Of Motion Proceedings Before The Honorable Janice M. Stewart United States District Magistrate Judge in (Doc #37, Pg. ID#: 293, Lines 3-5) and (adidas' ER 448). As confirmed by Magistrate Judge Stewart and overlooked by the trial District Judge Brown, who sanctioned Calmese nearly \$10,000.00 for attempting to introduce the May 24, 2007 subject PTO rulings as part of the record, the subject PTO rulings are relevant and are part of the record before the District Court and the Ninth Circuit Court of Appeals, but were somehow overlooked. Honorable Judge Stewart's words on October 22, 2008 prove Calmese did in fact provide adidas with a copy of the May 24, 2007 letter prior to the close of discovery, which subsequently confirms Calmese's perjury theory against adidas. Because how can Judge Stewart speak of the May 24, 2007 letter on October 22, 2008, while at a later time adidas' legal team represented on the district court record that Calmese provided no such document in (Doc. 82) on February 20, 2009, just 4 months after the October 22, 2008 Hearing. Thus, as

confirmed by Magistrate Judge Stewart, the May 24, 2007 letter containing the PTO's previous rulings were in fact part of the record on October 22, 2008, which was well before the close of discovery and certainly prior to the erroneous ruling at summary judgment that did not consider the PTO's previous rulings and favored adidas. Therefore, with all due respect, Calmese is confident his petition for certiorari will say enough to give the Honorable U.S. Supreme Court a degree of confidence that common sense and justice are on Calmese's side, especially because the evidence supports the fact that Honorable Judge Stewart confirmed the May 2007 letters received by adidas were in the pleadings prior to the close of discovery and should have been a part of the record at summary judgment. Calmese did in fact bring (Doc. 37-3) up in his appeal. See (Case: 11-35053 08/29/2011 ID: 7878404 DktEntry: 31 Pg: 22 of 30).

Calmese contends the lower Courts have clearly failed to acknowledge the PTO's previous rulings and the fact that adidas only prevailed in this litigation were Calmese was unknowingly being represented by adidas former employee Anthony McNamer a.k.a. Anthony Davis. While Anthony McNamer's name change and the actual concealment of his name change may have been legal, the misrepresentation of the law regarding the impact the PTO's previous rulings should have legally had on this matter affords Calmese the right to seek relief in his Malpractice Complaint

on file with the OSB and soon to be on file in district court and even perhaps in the U.S. Supreme Court.

Dated April 10, 2013

Respectfully submitted,

s/Michael Calmese  
3046 N. 32<sup>nd</sup> Street APT 321  
Phoenix, Arizona 85018  
(602) 954-9518

Attorney Pro Se

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing AMENDED NOTICE OF STATUS was served upon FRIEDLAND AND VINING P.A. and PERKINS COIE LLP by delivering a true and correct copy of the same via U.S. Mail on April 10, 2013 as follows:

David K. Friedland

Stephen M. Feldman, OSB No. 932674

FRIEDLAND AND VINING P.A.

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